

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KEITH D. BUNTEMAYER**

## Claimant

VS.

## HOLTON TRAILER SALES & SERVICE

Respondent

AND

**EMPLOYERS MUTUAL CASUALTY COMPANY**

Insurance Carrier

Docket No. 1,039,955

## ORDER

Claimant appealed the June 10, 2008, Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

## ISSUES

Claimant alleges he initially injured his left shoulder at work in September 2007, when a rack fell from a trailer and struck him. He also alleges he further injured or aggravated that shoulder and his back as the result of cumulative repetitive trauma as he continued to work for respondent through approximately March 8, 2008. Accordingly, claimant alleges two accidents in this claim – a single accident occurring in September 2007 followed by a series of repetitive or cumulative traumas through his last day of work.

In the June 10, 2008, Preliminary Decision, Judge Foerschler denied claimant's request for workers compensation benefits after intimating claimant may have injured his shoulder moving and stacking wood. The Judge held, in part:

The cause of the injury did not appear to be uniformly reported by claimant in the unauthorized medical care he had. Splitting wood for personal use was alleged to be the cause of his current shoulder problems, alleged to be a rotator cuff injury, but the way he described how he did that does not seem anymore likely to create his shoulder condition than the saddle rack fall, but all the moving and stacking of his wood could. Under these circumstances, it is found that compensability has not yet been established for preliminary purposes and the

request for benefits is denied for now. The matter can remain open for additional evidence, on reasonable notice.<sup>1</sup>

Claimant argues Judge Foerschler erred. Claimant denies injuring his left shoulder splitting wood and asserts he would not have used his left shoulder to split wood as he is right hand dominant. Claimant argues it is more probable he injured his left shoulder due to the strenuous work he performed for respondent, which included repetitively lifting 30 to 50 pounds, working overhead with 25-pound objects, helping others lift 300-pound generators, and working in cramped quarters and awkward positions. Regarding the alleged back injury, claimant cites Dr. E. Jerome Hanson's opinion that claimant began lifting in an awkward manner due to his left shoulder symptoms and he, therefore, developed low back symptoms.

Claimant also argues that the Board should find claimant gave respondent timely notice of his September 2007 accident as he immediately reported the incident to his direct supervisor. He also argues that under K.S.A. 44-508(d) the earliest date of accident for his alleged cumulative trauma injuries to his left shoulder and back would be in either late March or early April 2008, when he first gave written notice to respondent by e-mail that his injuries were work-related. Accordingly, claimant contends he gave timely notice for both alleged accidents.

In short, claimant requests the Board to reverse the June 10, 2008, Preliminary Decision and remand the claim to the Judge for further proceedings.

Conversely, respondent and its insurance carrier request the Board to affirm the Preliminary Decision as claimant allegedly failed to prove he injured himself at work. They argue the September 2007 incident was very minor and did not require any medical treatment. They also argue claimant did not seek any medical care until January 2008, when he told his doctor that he had been splitting a lot of wood by hand and using his left upper extremity. Finally, they assert claimant failed to present any contemporaneous medical reports that linked his low back symptoms to the work he performed for respondent. In summary, respondent and its insurance carrier contend it is very apparent claimant's present symptoms are from injuries or aggravation he suffered somewhere other than while working for respondent.

The principal issue before the Board at this juncture is whether claimant injured his left shoulder and low back working for respondent.

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<sup>1</sup> ALJ Preliminary Decision (June 10, 2008) at 2.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the undersigned finds and concludes:

Claimant, who is 42 years old, began working for respondent in June 2007. In September 2007, a saddle rack fell and struck claimant on his left shoulder when he opened a rear tack door of a horse trailer. Claimant contends the rack, which he estimates weighed between 35 and 50 pounds, hit the top of his left shoulder and then caused a cut near his left collarbone as he moved backwards. Claimant immediately reported the incident to his supervisor, Clifford Sparks, III.

Claimant did not immediately seek medical treatment. Several days following the accident claimant's pain decreased but claimant did not feel the shoulder had returned to normal. Indeed, claimant testified that in January 2008 he noticed the symptoms in his shoulder were worsening. Consequently, claimant sought medical treatment on January 16, 2008, with his family doctor, Dr. Ann Smith. The doctor, or her assistant, placed claimant on light duty and gave him a 10-pound lifting restriction for the left arm.

According to Dr. Smith's office notes, claimant told her about the rack hitting his left shoulder and also told her that lifting exacerbated the shoulder pain. Moreover, the doctor's notes indicate claimant reported the pain in his left shoulder resolved a day or two following the rack incident but that his shoulder pain had returned about 10 days before his appointment. Claimant also told the doctor (or her assistant) that he had been splitting wood by hand at home. Contrary to the doctor's notes, claimant does not believe he told the doctor that he had been using his left shoulder to split wood. Claimant testified he held the splitting wedge with his left hand while he held and used a five-pound hammer in his right. He also testified he believes he ran out of wood towards the end of December. In short, claimant specifically denies injuring his left shoulder splitting wood.

Claimant continued working for respondent until approximately March 8, 2008. When claimant saw Dr. Smith on March 12, 2008, he reported having pain in his low back that radiated out towards the area of his kidneys and that he was having problems urinating. The doctor's office notes from March 12, 2008, indicate claimant had been having flank pain for two days.

But claimant did not associate his low back pain to an injury. Claimant initially thought his low back pain was from another kidney infection as he had experienced similar symptoms in the past, except on those previous occasions the low back pain was only on the right side. During this general time frame, claimant spoke with his supervisor about having problems urinating, his back hurting, and attributing these symptoms to his kidneys.

Dr. Smith referred claimant to Dr. Connett, a urologist. Claimant met with Dr. Connett in mid-March 2008. After testing, Dr. Connett determined claimant did not have a urological problem and, therefore, the doctor recommended an MRI. On March 27, 2008, claimant underwent a left shoulder MRI and a low back MRI. The left shoulder film indicated claimant may have some tendinosis or a partial tearing of the supraspinatus tendon. The low back film indicated that claimant had multiple levels of disc desiccation and a herniated disc at the L5-S1 intervertebral level. Claimant contends he first realized his back symptoms could be related to his work upon learning of the MRI results.

At his attorney's request, claimant was evaluated by Dr. E. Jerome Hanson, a neurological surgeon, on April 24, 2008. Dr. Hanson concluded claimant initially injured his left shoulder in September 2007 when the saddle rack struck claimant and that his left shoulder worsened due to claimant's ongoing daily activities at work. The doctor also concluded that claimant's low back symptoms were caused by the lifting claimant performed in an awkward manner following his left shoulder injury. In short, the doctor recommended claimant consult with a physiatrist or orthopedist for both his ongoing left shoulder and low back problems. And that is the treatment claimant now requests in this workers compensation claim.

Before working for respondent, claimant had never experienced a left shoulder injury. But he had previously experienced low back pain in July 2004, while working for another employer. Claimant believes he may have received a few days of physical therapy. In addition, in June 2005 claimant sought medical treatment for low back pain and pain in the back of the upper left leg, which Dr. Smith treated with nonsteroidal anti-inflammatory agents. Nonetheless, those symptoms resolved and claimant was able to resume his employment without work restrictions and without being assigned an impairment rating.

Respondent presented several witnesses at the preliminary hearing. Claimant's former supervisor, Clifford Sparks, III, admitted claimant advised him of the saddle rack incident but he denies learning that claimant was alleging a work-related injury until approximately a week after claimant last worked.<sup>2</sup> Mr. Sparks, however, also testified that claimant did not show any signs of being injured afterwards until towards the very end of his employment when he would leave work early due to shoulder pain. Indeed, Mr. Sparks was aware claimant was experiencing both left shoulder and fairly severe low back pain during claimant's final days of employment with respondent. Mr. Sparks, who has problems with one of his wrists, also testified claimant had mentioned that Mr. Sparks could contrive a story to make a workers compensation claim for his wrist.

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<sup>2</sup> P.H. Trans. at 84.

Mr. Sparks admitted he had never asked claimant if his left shoulder problems were related to work as Mr. Sparks merely assumed they were not. Moreover, the last time Mr. Sparks recalls claimant splitting wood was in January 2008.

Ryan Holton, who is respondent's general manager, testified at the preliminary hearing that he had no knowledge of the September 2007 incident regarding the saddle rack. Other than claimant complaining of symptoms in his side and problems urinating, Mr. Holton was not aware that claimant was experiencing any other difficulties during his employment with respondent and he denies having any conversations with claimant about his low back or shoulder. Conversely, Mr. Holton was aware that claimant burned wood at home and, therefore, he knew claimant would gather and cut wood. According to Mr. Holton, claimant's alleged injuries turned into a workers compensation claim after respondent had declined to loan him money.

Finally, respondent presented the testimony of Matt Bass, who worked with claimant and who observed the saddle rack strike claimant on the left collarbone. According to Mr. Bass, claimant stated he hurt but he never mentioned it again. Moreover, Mr. Bass testified claimant later complained of shoulder pain that Mr. Bass assumed was related to splitting wood and that claimant had trouble with lifting some items due to his shoulder. On the other hand, claimant did not mention to Mr. Bass that he was having any low back symptoms.

The undersigned finds claimant's testimony and Dr. Hanson's opinions credible. Accordingly, the undersigned finds that claimant developed low back symptoms and left shoulder symptoms due to the work he was performing for respondent through approximately March 8, 2008. Claimant's supervisor acknowledges that he was aware that claimant was having low back and left shoulder symptoms during claimant's final days of employment with respondent.

At this juncture it appears the wood splitting that claimant performed is a red herring. Claimant is right hand dominant. When splitting wood, he used his left hand to hold the wedge. Claimant's right arm wielded the hammer. The greater weight of the evidence indicates claimant sustained cumulative trauma in his left shoulder and low back from his daily work activities, which included lifting relatively heavy items, performing activities overhead, and working in awkward positions. Consequently, the undersigned reverses the Judge's finding that claimant failed to prove he injured himself while working for respondent. Accordingly, this matter should be remanded for further proceedings to address claimant's requests for temporary total disability benefits and medical benefits.

Respondent and its insurance carrier also raised the issues of timely notice and timely written claim, which the Judge did not address in the Preliminary Decision. Consequently, upon remand the Judge should also consider those issues and the

appropriate accident date for the cumulative trauma injuries to claimant's left shoulder and low back in light of K.S.A. 2007 Supp. 44-508(d), unless the parties should agree as to the appropriate accident date.

**WHEREFORE**, the undersigned Board Member reverses the June 10, 2008, Preliminary Decision and remands this claim to the Judge for further proceedings. The Board does not retain jurisdiction over this claim.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 2008.

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KENTON D. WIRTH  
BOARD MEMBER

c: Kevin J. Kruse, Attorney for Claimant  
Ronald J. Laskowski, Attorney for Respondent and its Insurance Carrier  
Marcia Yates-Roberts, Administrative Law Judge